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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/889,000	06/22/2001	Shinji Uebayashi	3815/124	3372
22913	7590	12/07/2005	EXAMINER PHAN, TRI H	
WORKMAN NYDEGGER (F/K/A WORKMAN NYDEGGER & SEELEY) 60 EAST SOUTH TEMPLE 1000 EAGLE GATE TOWER SALT LAKE CITY, UT 84111			ART UNIT 2661	PAPER NUMBER

DATE MAILED: 12/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/889,000	Applicant(s) UEBAYASHI ET AL.	
	Examiner Tri H. Phan	Art Unit 2661	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 November 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: 7, 16, 17, 32, 41 and 42.
Claim(s) objected to: _____.
Claim(s) rejected: 2-5, 8-15, 18-26, 28-31, 33-40 and 43-48.
Claim(s) withdrawn from consideration: 1, 6 and 27.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☒ Other: See Continuation Sheet.


BRIAN NGUYEN

PRIMARY EXAMINER

Advisory Action Before the Filing of an Appeal Brief

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's response filed on 11/14/2005, has been considered, but it is not deemed to place the application in condition for allowance, because the limitations argued by applicant are not found to be persuasive. The traversal is based on the ground:

- In regard to claims 2-3 and 28-29, Applicant argues that Johnson, Christopher Phillip (EP 0975184; hereinafter refer as 'Johnson') does not teach the method for assigned channel based on a FDD/TDD method, if the handover frequency is high/low. In fact, Johnson does disclose about the selecting method for the assigned FDD/TDD in figure 9, step 812; which bases on the sum of the weighted values is/is not exceeded the predetermined threshold in figure 9, step 932 (see col. 10, lines 22-33); e.g. "method for assigned channel based on a FDD/TDD method"; wherein the weighted values are calculated based on the circumstances and the characteristics of the cellular telephone, e.g. not only by the velocity but also by the 'position of the cellular telephone' (see col. 9, lines 15-23) in determining 'handover' based on the high/low bit rate (see col. 8, lines 14-25), e.g. "if the handover frequency is high/low". Therefore, the examiner submits that Johnson reference read upon the arguments of the claimed limitations.

- In regard to claims 4-5 and 30-31, Applicant argues that Johnson does not teach the method for using the received power for selecting the FDD/TDD method. In fact, Johnson does disclose about the selecting method for the assigned FDD/TDD in figure 9, step 812; which bases on the sum of the weighted values is/is not exceeded the predetermined threshold in figure 9, step 932 (see col. 10, lines 22-33); e.g. "method for selecting the FDD/TDD method"; wherein the weighted values are calculated based on the circumstances and the characteristics of the cellular telephone, e.g. not only by the velocity but also by the 'position of the cellular telephone' and the 'characteristics relating to interference' (see col. 9, lines 15-23 where it is inherent that the more interference and farthest location is the lesser power received, and vice versa, e.g. "using the received power value high/low for selecting the FDD/TDD method") in selecting FDD/TDD method based on the weighted values. Therefore, the examiner submits that Johnson reference read upon the arguments of the claimed limitations.

- In regard to claims 8-25 and 33-46, Applicant argues that Johnson does not teach the method for "switching the assigned channel of the mobile station". In fact, Johnson does not explicitly use the word "switching the assigned channel of the mobile station"; however, the 'assigned FDD/TDD scheme to the cellular telephone' (for example see col. 10, lines 49-51) is performed the same function as "switching the assigned channel of the mobile station", since the assigned scheme is based on the request for service of the cellular telephone for changing the selected scheme during activity as disclosed in col. 10, line 56 through col. 11, line 10; or for 'handover' based on the circumstances and characteristics such as interference or location changing of the cellular telephone as disclosed in col. 9, lines 18-25. Therefore, the examiner submits that Johnson reference read upon the arguments of the claimed limitations.

Continuation of 13. Other: The drawings filed on 11/14/2005 are accepted by the examiner. Claims 2-5,8-15,18-26,28-31,33-40 and 43-48 remain rejected as set forth in the final rejection of paper no. 20050906.